

from connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or any employee or agent of any of them.

(d) *Claims.* Claims for losses and shortages allowable under this section must be filed in accordance with the provisions of subpart J of this part.

(e) *Limitations.* TTB will abate, remit, credit, or refund taxes on spirits, denatured spirits, or wines lost by theft only to the extent that the claimant is not indemnified against, or recompensed for, the taxes paid or owed.

(26 U.S.C. 5008, 5370)

§ 19.462 Determination of losses in bond.

(a) *Times for determining losses.* A proprietor must determine at any of the following times whether a loss of spirits, denatured spirits, or wines has occurred:

- (1) Each time a tank or bulk conveyance is emptied;
- (2) Upon discovery of an accident or an unusual variation in a gauge; and
- (3) When required to take a physical inventory.

(b) *Losses from theft, tampering, or unauthorized voluntary destruction.* Whenever any spirits, denatured spirits, or wines are lost or destroyed in bond, whether by theft, tampering, or unauthorized voluntary destruction, the proprietor may elect voluntarily to pay the tax on the quantity lost. If the proprietor does not elect to pay the tax, the proprietor must promptly report the loss or destruction to the appropriate TTB officer. TTB may require that the proprietor file any claim for relief from the tax in accordance with § 19.263.

(c) *Missing packages.* When a proprietor cannot locate or otherwise account for any packages of spirits, denatured spirits, or wine recorded as deposited on bonded premises, the proprietor must promptly report that fact to the appropriate TTB officer. In such case the proprietor must either pay the tax on the lost spirits, denatured spirits, or wines or file a claim for relief from the tax in accordance with § 19.263.

(d) *Excessive in-transit losses.* A proprietor must promptly report excessive

in-transit losses to the appropriate TTB officer. As a general rule, when spirits, denatured spirits, or wines are received in bond in bulk conveyances TTB will consider as excessive a loss that exceeds 1 percent of the quantity consigned. However, in the case of transcontinental transfers of wine in bond, TTB will consider as excessive only a loss in excess of 2 percent of the quantity of wine consigned.

(e) *Excessive storage losses.* A proprietor must pay the tax on excessive storage account losses of spirits unless the proprietor files a claim for remission in accordance with § 19.263 and TTB allows the claim under § 19.268. TTB will consider a storage account loss as excessive when the quantity of spirits lost during a calendar quarter from all storage tanks and stored bulk conveyances exceeds 1.5 percent of the total quantity contained in the tanks and stored bulk conveyances during the calendar quarter.

(26 U.S.C. 5008, 5370)

§ 19.463 Loss of spirits from packages.

(a) *Tampering or theft.* The appropriate TTB officer may require that a proprietor pay the tax on any loss caused by tampering or theft of spirits from packages in storage unless the proprietor establishes to the satisfaction of the appropriate TTB officer that the loss was not due to connivance, collusion, fraud or negligence on the part of the proprietor. As a general rule, the tax will be assessed on the quantity of spirits that represents the difference between the quantity originally entered in the package and the quantity remaining after discovery of the tampering or theft. However, if the proprietor can show that the package had already sustained normal storage losses before the tampering or theft occurred, the proprietor may exclude the amount of the normal storage losses from the quantity to be taxpaid.

(b) *Alternative method of tax assessment.* If tampering or theft has occurred at a proprietor's plant and the proprietor has failed to use effective controls to prevent it, the appropriate TTB officer may use an alternative to the general method of tax assessment specified in paragraph (a) of this section. In this case, the appropriate TTB

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officer may assess on each package showing evidence of tampering or theft an amount equal to the tax on 5 proof gallons of spirits.

(26 U.S.C. 5006)

§ 19.464 Losses after tax determination.

If a proprietor sustains a loss of spirits after tax determination but prior to completion of physical removal of the spirits from bonded premises, the proprietor may file a claim in accordance with subpart J of this part.

(26 U.S.C. 5008)

§ 19.465 Shortages of bottled spirits.

(a) *Determination of shortage.* The determination of whether an unexplained shortage of bottled distilled spirits exists must be made by comparing the spirits recorded as being on hand to either the results of the physical inventory required by § 19.372 or the results of any other complete physical inventory taken by the proprietor. When the recorded quantity is greater than the quantity determined by physical inventory, the difference is an unexplained shortage. The proprietor must adjust its records to reflect the results of the physical inventory.

(b) *Payment of tax on shortage.* A proprietor must pay the tax on any unexplained shortage of bottled distilled spirits:

(1) Immediately on a prepayment return on form TTB F 5000.24, Excise Tax Return; or

(2) On a deferred payment return on TTB F 5000.24 for the period during which the shortage was determined.

(26 U.S.C. 5008)

Subpart S—Containers and Marks

§ 19.471 General.

The proprietor of a distilled spirits plant must comply with the container and marking requirements that apply to both industrial and nonindustrial spirits. This subpart covers those requirements. For the requirements that apply to articles made with denatured spirits, see part 20 of this chapter. For

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the requirements that apply to wine, see part 24 of this chapter.

(26 U.S.C. 5206)

§ 19.472 Need to determine use of spirits—industrial or nonindustrial.

Many of the container and marking requirements set forth in this subpart are based on the intended use of the spirits, that is, whether they are for “industrial” or “nonindustrial” use. For purposes of this subpart, the terms “industrial” use and “nonindustrial” use refer to the uses specified in paragraphs (a) and (b) of this section.

(a) *Industrial use.* The word “industrial” when used with reference to the use of spirits has the same meaning as in §§ 1.60 and 1.62 of this chapter. Those uses are as follows:

(1) Free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes;

(2) Free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale—

(i) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(ii) For any laboratory for use exclusively in scientific research;

(iii) For use at any hospital, blood bank, or sanitarium (including use in making analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(iv) For the use of any clinic operated for charity and not for profit (including use in compounding of bona fide medicines for treatment outside of such clinics of patients thereof);

(3) Free of tax, after denaturation of such spirits in the manner prescribed by law for—

(i) Use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or